



## ATTACHMENT A

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**DEPT OF**

**JUN 22 2006**

June 22, 2006

**LAND CONSERVATION  
AND DEVELOPMENT**

Land Conservation and Development, John Van Landingham, Chair  
Department of Land Conservation and Development, Lane Shetterly, Director  
635 Capitol Street, Suite 150  
Salem, OR 97301-2540

Re: MCMINNVILLE PERIODIC REVIEW APPEAL OF ORDER 001696

Dear Chair Van Landingham and Members of the Commission:

1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse hereby appeal the decision of the department to approve McMinnville Periodic Review Task 1 and UGB amendment submittal, as reflected in DLCD Order No. 001696. 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse participated at the local level, filed valid objections, and have standing to file this appeal.

### OVERVIEW

The City of McMinnville has been engaged in a review of its Urban Growth Boundary for too long. Despite the advice of both DLCD and our organizations, the city has repeatedly taken actions that have delayed completion of this project.

In 1999, at the request of the Urban Growth Boundary Steering Committee and the McMinnville Urban Area Management Commission (MUAMC), the city's consultant team developed an expansion proposal for the period 2000-2020, based on more efficient development at an overall average of 7.5 dwelling units per net buildable acre.<sup>1</sup> This is higher than the overall density currently proposed by the city.

Before reaching a decision on this proposal the city hired a new consultant team and in 2000 and 2001 developed a new analysis. Then, despite warnings from DLCD and 1000 Friends, the city attempted to bypass DLCD and LCDC in a process later determined to be illegal by LUBA.

The current submittal will result in further delays. Because the city's regulations do not adequately implement the plan; because the large size of the proposed expansion is not justified; and because the proposed expansion includes prime farmland instead of available exception areas and areas of poorer soils, the city's submittal violates several provisions of state law.

<sup>1</sup> McMinnville Land Needs Analysis, February 1999, Appendix B, p. 26 ( see attachments to our local testimony dated December 6, 2005)

**HAND DELIVERED**

The submitted amendments add approximately 1200 acres of land to McMinnville's UGB. This includes exception areas whose inclusion was acknowledged in 2004 and approximately 794 acres of resource land included in the current decision. This is in addition to more than 1000 acres of buildable land in McMinnville's existing pre-2003 UGB. About 30% of the buildable land included in the expansion is purportedly for neighborhood and community parks.

The City has not included within the expanded UGB hundreds of buildable acres of land in adjacent exception areas nor has it included hundreds of buildable acres of adjacent land with poorer soils. Instead, the city plans extensive new development on prime farmland west, east, north and south of the existing boundary. This includes extensive new residential and commercial development south of the Highway 18 bypass around McMinnville, creating a potential traffic nightmare.

Despite years of urging from the Oregon Department of Agriculture and 1000 Friends, for several expansion areas the city has still not analyzed the compatibility of proposed new urban uses with nearby farm and forest activity.

For land already within the city, the city has failed to adopt various zoning amendments that form the basis for the plan and has otherwise failed to adopt an internally consistent plan and implementing regulations. In addition, while the decision allows smaller lots, duplexes and higher density housing in broader areas than previously proposed, the city has failed to recalculate its land needs in light of these amendments.

As detailed below, at various points the department's order misconstrues relevant law, misconstrues relevant facts, misconstrues our objections, and reaches conclusions that are not supported by evidence in the record. As a result, the department reaches the wrong conclusions.

In summary, the department's order and report approves amendments adopted by McMinnville and Yamhill County even though they are inconsistent with ORS 197.296, ORS 197.298, ORS 197.732, Goal 2, Goal 10, Goal 14 and OAR 660 Division 4.

## **REQUEST FOR MEDIATION SERVICES**

To resolve the issues raised in our objections and in this appeal we request mediation services pursuant to OAR 660-025-0085 (2)(a). We believe mediation in good faith may provide a speedier and more certain resolution to the disputes related to this appeal.

## **SPECIFIC APPEAL ISSUES**

We hereby renew our objections filed February 17, 2006. Because the requirements for appeals under OAR 660-025-0150 are nearly identical to the requirements for objections

under OAR 660-025-0140 this appeal follows the format of those objections and necessarily repeats much of them.

**OBJECTION 1: THE CITY'S ZONING AND REGULATIONS FAIL TO IMPLEMENT ZONE CHANGES THAT FORM A BASIS FOR THE PLAN.**

ISSUE: DO THE CITY'S IMPLEMENTATION MEASURES "NEED TO BE CONSISTENT WITH AND ADEQUATE TO CARRY OUT THE PLAN," AS REQUIRED BY GOAL 2?

Statewide Planning Goal 2, Part I and sensible policy both dictate that the city's regulations and zoning implement the plan.<sup>2</sup> In some cases, this implementation is also needed to comply with Goal 14 directives to use urban land efficiently and Goal 10 directives regarding needed housing.

As noted in our first objection, the plan adopted by the city is based in part on several rezonings that the city has failed to implement. At a minimum, these include:

- A. rezoning 204 acres of residential land from R-1 (9,000 sq. ft. minimum lot size) to R-2 (7,000 sq. ft. minimum lot size).
- B. rezoning residential land zoned R-1 to R-3, R-4, and R-5
- C. rezoning land in transit corridors
- D. rezoning land to R-5 (multi-family)

The reasons given by the department for rejecting our objection reflect a misunderstanding of the city's submittal, a misunderstanding of our objection, and/or a misunderstanding of the relationship between plans and implementation measures:

*A. Rezoning R-1 Land to R-2*

Regarding the 204 acres, the department rejected our objection because:

"The city has adopted a [plan] policy that contains an implementation measure to rezone land from R-1 to R-2 on slope constrained lands ... ; Therefore the plan contains specific implementation measures..."

This response reflects a misunderstanding of the relationship between plans and implementation measures. Adopting a comprehensive plan policy limiting R-1 zoning to slope-constrained lands is not the same as implementing that policy. Under Goal 2 and ORS 197 comprehensive plans are generalized maps and policy statements that guide land use decisions. Implementation measures include zoning ordinances and "are the

<sup>2</sup> Statewide Planning Goal 2, Part I provides, in part: "The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans."

means to carry out the plan.” ORS Chapter 197 requires that the provisions of the zoning ordinance conform to the comprehensive plan.

In this case, the city has adopted a plan policy that restricts R-1 zoning to slope-constrained land and which calls for rezoning 204 acres of land from R-1 to R-2. The city has based its UGB amendments in part on this comprehensive plan policy.

The implementing regulations adopted by the city as part of this decision do not rezone a single acre from R-1 to R-2, as called for in its adopted plan, and the city continues to have large vacant areas zoned R-1 that are not slope-constrained. Therefore, the city’s zoning does not conform to the comprehensive plan and the city’s implementation measures are neither consistent with the plan nor are they adequate to carry out the plan.

Thus, the city’s submittal violates Goal 2, Part I, ORS 197, and as explained in our objections, Goal 14, Factor 4.

*B. Rezoning R-1 land to R3, R-4, and R-5.*

The *MGMUP* is based in part upon rezoning R-1 zoned land in the Grandhaven area and in northwest McMinnville to medium and high-density residential development. It states:

“Some lands presently zoned for low-density development and zoned R-1 are proposed to be rezoned to medium and high-density residential development in order to implement the Neighborhood Activity Center concept. Specifically, these are vacant buildable lands in the Grandhaven area and in northwest McMinnville.”<sup>3</sup>

The department previously recommended that the plan and related implementing regulations be remanded to make them internally consistent, consistent with the findings used to justify the UGB amendment, and to comply with applicable goal requirements. The recommendation included a specific requirement to, “*Rezone those parcels identified as suitable for medium- and high-density housing in order to implement the plan.*”<sup>4</sup> (emphasis added).

The department now rejects our objection because the department believes, “The areas references [sic] are generally located in the NAC overlays, and are subject to future refinement planning...”

With respect to the Grandhaven area the department is wrong. None of the land presently zoned R-1 is within the NAC overlay area and none the land within the NAC overlay area is presently zoned R-1.

<sup>3</sup> *MGMUP*, p. 7-24

<sup>4</sup> Director’s report, March 30, 2004

The plan amendments and implementing regulations adopted by the city as part of this decision do not rezone a single acre of these vacant buildable lands from R-1 to R-3, R-4 and R-5, as called for in its adopted plan. Therefore, the city's zoning does not conform to the comprehensive plan and the city's implementation measures are neither consistent with the plan nor are they adequate to carry out the plan. Thus, the city's submittal violates Goal 2, Part I, ORS 197, and Goal 14, Factor 4.

### *C. Transit Corridors*

The text of the *MGMUP* and the city's findings put forth higher-density transit corridors as a key component of the plan. The city adopted amendments that increase the width of the residential density enhancement corridor from 1,000 feet to 1/2 mile in width. We support these amendments.

Unfortunately, while the adopted decision and plan identifies remaining parcels where rezoning to higher densities would allow more transit-supportive development, the amendments and implementing regulations adopted by the city do not rezone these parcels to higher densities, as called for in its adopted plan.<sup>5</sup> As noted in the local staff report, as these parcels continue to be developed, opportunities for transit-supportive development are lost.

With respect to rezoning land in Transit Corridors, the department rejected our objection because the city, "proposes to consider these rezonings" in a future process. This response reflects a misunderstanding of relationship between the plan and implementation measures. The city's zoning must conform to the comprehensive plan. A "proposal to consider" amending the zoning to conform to the plan is not adequate to fulfill this requirement.

Because the city's zoning does not conform to the comprehensive plan, the city's implementation measures are neither consistent with the plan nor are they adequate to carry out the plan. Thus, the city's submittal violates Goal 2, Part I, ORS 197, and Goal 14, Factor 4.

### *D. Multi-family zone (R-5)*

The city's revised housing needs analysis determined a need for a new high-density multi-family zone to accommodate 18% of all needed housing, based in part on an assessment of income levels, housing affordability and efficient land use.<sup>6</sup>

Unfortunately, while the adopted decision creates a new R-5 zone within the city's zoning code, the city's decision does not actually apply the zone anywhere to even a

<sup>5</sup> *MGMUP*, p. 5-24 and Ordinance No. 4840, p. 3,

<sup>6</sup> *MGMUP*, p. B-9

single acre of land, even though the highest contemplated densities are within the existing city limits in the downtown core.<sup>7</sup>

The department rejected our objection because:

“Plan policy 71.12 states that the R-5 zone should be applied to lands within Neighborhood Activity Centers and to lands within existing or planned transit corridors.” The planning and implementation has, by [plan] policy (...187.000, as amended), been deferred to a time in the future when funding is available to carry out such master planning.”

This response misunderstands our objection.

First, it fails to explain how the city can defer implementation of a zone needed to accommodate 18% of all needed housing and still meet its obligations under Goal 10 and under ORS 197.296(9) and ORS 197.307.

Second, it fails to explain how the city’s failure to implement the R-5 zone in those areas outside of NAC’s (existing and planned transit corridors) can be reconciled with the city’s obligation to implement the plan.

Third, the policy cited by the department defers implementation to “within the current planning period (years 2003-2023).” Thus, adoption of adequate implementation measures may not occur until 2023, at the end of the planning period. The department’s response fails to explain how adopting implementation measures at the conclusion of the planning period can be “adequate to carry out the plan.”

For these reasons, the city’s submittal violates Goal 2, Part I, Goal 10 and Goal 14, Factor 4.

#### Remedy:

Consistent with the department’s previous recommendation, the Commission should remand the *MGMUP* with instructions to rezone land from R-1 to R-2; from R-1 to R-3, R-4, and R-5; those parcels identified in transit corridors as suitable for medium- and high-density housing; and to R-5 in order to implement the adopted plan.

**OBJECTION 2: THE DEFINITIONS OF LOW-, MEDIUM-, AND HIGH-DENSITY RESIDENTIAL DEVELOPMENT WITHIN THE *MGMUP* AND ITS IMPLEMENTING ORDINANCES ARE INTERNALLY INCONSISTENT, INCONSISTENT WITH REGARD TO MINIMUM LOT SIZES AND THE TYPES OF RESIDENTIAL PRODUCTS FOUND IN**

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<sup>7</sup> *MGMUP*, p. 7-25

**THE CITY, AND INCONSISTENT WITH THE CITY'S HOUSING NEEDS ANALYSIS.**

ISSUE: DOES THE COMPREHENSIVE PLAN NEED TO BE INTERNALLY CONSISTENT AND CONSISTENT WITH ITS IMPLEMENTING ORDINANCES AS REQUIRED BY GOAL 2?

The city's adopted plan states:

**"Medium Density Residential (R-3 and R-4):**

The majority of residential lands in McMinnville are planned to develop at medium density range (4-8 dwelling units per net acre.) Medium density residential development uses include small lot single-family detached uses, single family attached units, duplexes and triplexes, and townhouses."<sup>8</sup>

And:

**"High-Density Residential (R-5):**

High density residential contains housing at densities of anywhere from 8 to 30 units per acre, depending on where the high-density dwellings are located (the highest densities being in the downtown commercial core). Typical uses include townhouses, condominiums, and apartments."<sup>9</sup>

*A. Medium Density Residential*

Although the city's adopted plan states that the majority of residential lands in McMinnville are planned to develop in the R-3 and R-4 zones at medium density range (4-8 dwelling units per net acre), the city based its UGB expansion on a "forecast" (also in the adopted plan) that is inconsistent with the text of the plan. The vast majority of residential lands in McMinnville are actually planned and zoned for low-density development in the R-1 and R-2 zones, the lowest density residential zones in the city.

According to Table 8 of the *MGMUP*, (p. B-10), the city plans for 1,053 acres of housing development in McMinnville between 2003 and 2023. Of these 1,053 acres, 669 acres- about 64%- are in the R-1 and R-2 zones. Only 313 acres- less than 30%- are in the city's medium density zones (R-3 and R-4).

DLCD has rejected this objection because, a) the "need forecast" on which the UGB expansion is based does not actually plan or rezone land, and b) some land in the city's low-density residential zones is also planned to develop at over 4 units per acre.

<sup>8</sup> *MGMUP*, p. 7-24

<sup>9</sup> *MGMUP*, p. 7-25

This response misunderstands the nature of comprehensive plans. Under Goal 2 and ORS 197, plans must be internally consistent and land use decisions must conform to the plan. Under Goal 2, the city cannot adopt a plan and UGB based on a majority of residential lands developing in low-density zones when the same plan unequivocally states that the majority of residential land is planned for medium density housing.

For these reasons, the city's submittal violates Goal 2, Part 1; and Goal 14, Factor 4. In addition, the city has not explained why these violations do not also lead to a violation of Goal 10.

**Remedy:**

**The Commission should remand the MGMUP with instructions to plan for a majority of residential lands to develop at medium density range, consistent with the text of the MGMUP. Since this will result in a considerably reduced need for residential land the Commission should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.**

*B. Density and Housing-types*

The city's adopted plan defines medium density residential as small lot single-family detached uses, single family attached units, duplexes and triplexes, and townhouses at 4 to 8 dwelling units per net acre. It defines high-density residential as 8 to 30 units per acre with typical uses of townhouses, condominiums, and apartments.<sup>10</sup>

In 2004 DLCD recommended that LCDC remand the MGMUP with instructions to:

"Revise the definitions of low-, medium-, and high-density residential development to ensure the comprehensive plan, policies, and implementing ordinances are internally consistent and consistent with regard to minimum lot sizes and the types of residential products found in the city."

The submitted amendments eliminate the numerical ranges for medium and high-density housing from plan policies 71.09 and 71.11 but do not otherwise revise the density and housing products considered to be medium and high density that are defined in the text of the plan. The city has not changed planned density within the R-3 and R-4 zones nor has it changed the housing products that are allowed in the zones and that are defined in the text of the plan. The amendments also do not revise the density used in formulating the plan and in calculating needed residential acreage. This does not solve the underlying inconsistencies previously identified by DLCD.

As noted in DLCD's 2004 "Response to Exceptions":

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<sup>10</sup> MGMUP, pp. 7-24 and 7-25



"The issue, then, is whether lots ranging from 8,400 to 4,200 square feet are consistent with the medium-density housing products defined... (small lot single-family detached, single-family attached, duplexes, triplexes, and townhouses), and whether housing products typically located on lots that are up to but less than 4,200 square feet are consistent with high-density housing products as those are defined... (townhouses, condominiums, and apartments)."

As DLCD found in its 2004 "Response to Objections":

"A small lot in this vicinity can be considered to range from 4,500 to 6,000 square feet, which equates to approximately eight dwelling units per net acre."

"Similarly, townhouses are commonly provided on lots ranging from 2,000 to 3,000 square feet. This equates to densities ranging from 14 to 22 dwelling units per net acre. Therefore, while the city's definition of medium-density development is stated to range from four to eight dwelling units per acre, the characteristic housing types listed are more commonly found to range from seven to 20 units per net acre. The plan is internally inconsistent."

The department now rejects our objection because, "Ultimately, the zoning designations determine both the density and the permitted housing types." This response reflects a misunderstanding of comprehensive plans and their relationship to zoning regulations.

While the department is correct that zoning determines both density and permitted housing types, that zoning must be consistent with the plan and the plan itself must be internally consistent. As the department previously found, it is not.

For these reasons, the city's submittal violates Goal 2, Part 1; and Goal 14, Factor 4. In addition, the city has not explained why these violations do not also lead to a violation of Goal 10.

#### Remedy:

Consistent with the department's previous recommendation, the Commission should remand the *MGMUP* with instructions to revise the definitions of low-, medium-, and high-density residential development to ensure the comprehensive plan, policies, and implementing ordinances are internally consistent and consistent with regard to minimum lot sizes and the types of residential products found in the zones. Since this will likely result in a reduced land need the Commission should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.

**OBJECTION 3: THE CITY HAS AMENDED THE PLAN IN A MANNER THAT REDUCES RESIDENTIAL LAND NEED BUT HAS FAILED TO ADOPT A CORRESPONDING REDUCTION IN THE SIZE OF THE UGB EXPANSION.**

ISSUE: DOES THE UGB EXPANSION HAVE TO BE BASED UPON DEMONSTRATED NEED AS REQUIRED BY GOAL 14?

Goal 14 requires UGB amendments to be based upon demonstrated need. Similar requirements are found in OAR 660, Division 4, in Goal 2, and in ORS 197.295.

The city's decision amends the *MGMUP* in several ways that reduce the amount of land required to meet the city's need for housing. The city's amendments enhance the "efficiency measures" defined in ORS 197.296(6) but the city failed to consider the impact of these enhanced efficiency measures on residential land need and failed to adopt a corresponding reduction in the size of the UGB expansion. Therefore, the city's submittal violates Goal 14, ORS 197.296 and other provisions of law.

The city amended the plan to: encourage, allow, and plan for higher density and multi-family housing within a ½ mile wide transit enhancement corridor (2,640 feet) rather than the previous 1,000 foot wide corridor (a 264% increase in the width of the corridor); and b) encourage, plan for, and allow higher density and multi-family housing within a ¼ mile wide radius of designated activity centers and neighborhood and general shopping areas rather than the previous 1/8 mile radius.

The city also amended the plan to establish a minimum density of 7.5 dwelling units per net acre in neighborhood activity centers. This density had previously been the targeted average upon which the city based its land need calculations, rather than a minimum.

DLCD rejected our objection because "There is no evidence that the policy revisions will increase density to the extent that a revision of the land needs or a corresponding reduction in the UGB expansion is warranted."

The department is wrong. The city previously calculated the impact of these measures, albeit for smaller areas. That impact is substantial.

In 2003 the city had calculated acreage "saved" based on the smaller areas of higher density and multi-family housing at a total of about 82 acres. The city failed to make adjustments for the new larger areas.

The city calculates the impact of allowing higher density and multi-family housing within the 31.4-acre area within the 1/8 mile radius as reducing land need by about 67 acres.<sup>11</sup> Doubling the radius of the area where this housing is permitted to ¼ mile quadruples the

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<sup>11</sup> *MGMUP*, p. 7-28, Table 16

area within which it is permitted. Hence total land "saved" will also quadruple from 67 acres to 267 acres. This is a 200-acre reduction in land needs for just this measure.

For the transit corridors, the city has previously calculated the impact of allowing higher density and multi-family housing in the narrower 1,000-foot wide corridor as reducing land need by about 16 acres.<sup>12</sup> Increasing the width of the corridor to ½ mile increases its land area by 264% and hence total land "saved" from 16 acres to 63 acres. This is a 47-acre reduction in land needs.

*By the city's own methodology, the amendments reduce residential land need by 247 acres. We disagree with the department that this is not extensive enough to warrant a reduction in land needs.*

Because the city has not considered the impact of these amendments on residential land need nor adopted a corresponding reduction in the size of the UGB expansion its submittal violates Goal 14 and ORS 197.296.

**Remedy:**

The Commission should remand the *MGMUP* with instructions to recalculate residential land need based on the new larger areas in which the city intends to encourage, plan for and allow higher-density housing. Since this will result in a reduced land need the Department should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.

**OBJECTION 4: THE CITY'S AMENDMENTS TO PLAN POLICY 188.03 FAIL TO RESOLVE INTERNAL INCONSISTENCIES WITHIN THE PLAN AND ESTABLISH A GUIDELINE CALLING FOR INEFFICIENT USE OF URBAN LAND.**

ISSUE: IS A PLAN POLICY THAT ESTABLISHES 1/8 MILE AS THE MAXIMUM DISTANCE FROM A NEIGHBORHOOD ACTIVITY CENTER FOCUS AREA THAT HIGH-DENSITY HOUSING SHOULD BE LOCATED INCONSISTENT WITH PLAN POLICIES THAT COMMIT THE CITY TO ALLOW HIGH-DENSITY HOUSING WITHIN A ¼ MILE DISTANCE OF THESE AREAS? IS IT CONSISTENT WITH GOAL 14?

The text of the *MGUMP* describes the Neighborhood Activity Centers as compact, pedestrian-friendly, and transit-supportive.<sup>13</sup> The *MGMUP* in part relies upon them to justify the purported need for large blocks of flat farmland and as purported evidence that the city is sufficiently implementing "efficiency measures."

Plan policy 188.03, as amended by the city's current decision, reads in relevant part:

<sup>12</sup> *MGMUP*, p. 7-28, Table 16

<sup>13</sup> Various pages including E-5, 5-16, 3-5, 1-2

"188.03 Neighborhood activity centers should be located and arranged according to the following guidelines:

\* \* \*

Maximum distance away from the edge of a Focus Area that high-density housing (a part of the support area) should be located: 1/8 mile

Maximum distance away from the edge of a Focus Area that medium-density housing (a part of the support area) should be located: 1/4 mile

\* \* \* "

While the city amended the policy to change "shall" to "should" in its first sentence, the policy still establishes guidelines limiting the location of "high-density housing" (elsewhere defined as densities of 8 units/net acre or greater) and medium density housing (elsewhere defined as densities of 4 - 8 units/net acre). These guidelines effectively state that all housing more than 220 yards more than from an NAC focus area should be less than 8 dwelling units per acre and that all housing more than 440 yards from an NAC focus area should be low-density. 220 yards is about 3 blocks, 440 yards is about 6 blocks.

*A. Internal inconsistency within the plan and regulations.*

The limitations on high-density density housing contained in Policy 188.03 are inconsistent with several policies cited in the preceding objection. As we noted above, the current decision amends plan policies 71.01, 71.13(7), 90.00, section 17.21.010(C) to plan for and allow higher density and multi-family housing within a 1/4 mile wide radius of designated activity centers and neighborhood shopping areas rather than the previous 1/8 mile radius.

For example, policy 71.13 states:

"The following factors should serve as criteria in determining areas appropriate for high-density residential development:

\* \* \*

7. Areas within one-quarter mile of from neighborhood and general commercial shopping centers or designated activity centers..."

The 1/8 mile limitation in policy 188.03 is inconsistent with this plan policy and other policies that encourage and allow higher density and multi-family housing within a 1/4 mile wide radius called for in these other policies and regulations.

It is also inconsistent with the stated intention of the Neighborhood Activity Centers described in the *MGMUP*: to provide compact, pedestrian-friendly, and transit-supportive development. For these reasons, the city's submittal violates Goal 2, Part 1.

*B. Establishment of guidelines calling for inefficient use of urban land*

By limiting the location of high and medium density housing the plan policy prevents the critical mass of compact development necessary to the success of the NAC's and thus undermines their purpose and function. In addition, it mandates inefficient use of residential land and thus inflates projected land needs and the size of the proposed UGB expansion. For these reasons, the city's submittal violates Goal 14 and ORS 197.296.

As DLCD stated in regard to the city's 2003 submittal:

"... this policy states that the "maximum distance" high-density housing can be located away from the edge of a Focus Area is 660 feet, while the "maximum distance" from the edge of the Focus Area for medium-density housing is 1,320 feet. This policy, *even in the context of a guideline*, appears to indicate that high-density housing is not allowed (or is certainly discouraged from being located) more than 660 feet from the edge of a Focus Area. By definition, this policy states that medium- or low-density housing are the only appropriate uses beyond this 660-foot distance.

McMinnville's zoning ordinance states that the minimum lot size in the R-3 zone (a medium-density zone) is 6,000 square feet. Therefore, this policy limits high-density housing to no further than 660 feet from the edge of a Focus Area, and that beyond this line, residential development with minimum lot sizes of 6,000 square feet are allowed. 6,000 square foot lots can be a component of a transit-oriented development, but it is inconsistent with transit-oriented development principles to preclude higher-density housing types from being located more than 660 feet from a transit stop or neighborhood center..."<sup>14</sup> (emphasis added)

DLCD recommended that the city's 2003 submittal be remanded to:

"Amend Policy 188.03 to more clearly be a guideline and *to not limit high-density housing from being a maximum distance of 1/8 mile (660') from the edge of a Focus Area.*" (emphasis added)

If high-density housing is only allowed within a 1/8 mile radius of 660 feet from a focus area, this encompasses an area of 31.4 acres in each NAC. If the radius doubles to 1/4 mile, the area within which high-density housing is allowed quadruples to 125.6 acres,<sup>15</sup> a not insignificant difference of 94.2 acres for each NAC.

<sup>14</sup> DLCD Response to Exceptions, April 20, 2004

<sup>15</sup> The formula is  $\pi \times \text{radius squared}$ . Divide by 43,560 to translate square feet to acreage.

Since the city has designated five Neighborhood Activity Centers in undeveloped areas, a total of 471 gross acres, or approximately 380 net acres, will be affected if Policy 188.03 is amended to be consistent with the other plan policies and regulations. The City has defined high-density as 8-30 units per net acre. Even at the lowest end of this density range, up to 3000 an additional housing units could be accommodated within a quarter-mile of the NAC focus areas if high-density housing were allowed.

Goal 14 requires that UGB amendments be based upon demonstrated need, and consider maximum efficiency of land uses within and on the fringe of the existing urban area and the retention of agricultural land. The city's decision violates these provisions of Goal 14 for the reasons stated above.

**Remedy:**

Consistent with the department's previous recommendation, the Commission should remand the *MGMUP* with instructions to amend Policy 188.03 to not limit high-density housing to a maximum distance of 1/8 mile (660') from the edge of a Focus Area. Since this will result in a reduced land need the Department should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.

**OBJECTION 5: THE CITY HAS REJECTED REASONABLE MEASURES THAT WOULD RESULT IN MORE EFFICIENT USE OF URBAN LAND.**

ISSUE: DOES THE CITY NEED TO DEMONSTRATE THAT THE NEW URBAN USES CANNOT BE ACCOMMODATED WITHIN THE EXISTING UGB? HAS THE CITY ADOPTED MEASURES THAT DEMONSTRABLY INCREASE THE LIKELIHOOD THAT RESIDENTIAL DEVELOPMENT *WILL OCCUR* AT THE HOUSING TYPES AND DENSITY AND AT THE MIX OF HOUSING TYPES REQUIRED TO MEET HOUSING NEEDS OVER THE NEXT 20 YEARS.

Under Factor 4 of Goal 14, ORS 197.732(1)(c)(B), Goal 2, Part II(c)(2), and OAR 660-04-020(2)(b) the city must adopt reasonable efficiency measures prior to expanding the UGB onto lands protected under Goal 3 and/or 4. The city must also demonstrate that the new urban uses cannot reasonably be accommodated within the existing UGB. In addition, under ORS 197.296 measures must be adopted that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years. Finally, under Goal 14 the city's UGB amendment must be based upon demonstrated need.

As detailed in our objections a number of reasonable efficiency measures were proposed for adoption during the public hearings process. These measures would have increased the portion of the new urban uses that could reasonably be accommodated within the

existing UGB. These measures would also be consistent with Goal 10, the city's housing needs analysis, and ORS 197.303. The City failed to adopt these measures or alternatively, to explain why they are not reasonable.

The department rejected our objection, concluding that "a city is only required to maximize efficiency or accommodate residential uses within the existing UGB to the extent necessary to comply with ORS 197.296." This response misunderstands the directives in Goal 2, Goal 14, and ORS 197.732. Nothing in ORS 197.296 allows a city to expand a UGB for new urban uses that can be reasonably accommodated within the existing UGB.

As the department wrote regarding commercial lands in its 2004 response to objections:

"It is reasonable to believe that the city can accommodate the projected... need on less land and, to comply with Goal 14 and the "exceptions" standards, it is incumbent on the city to do so."

Furthermore, the city has not even maximized efficiency to the extent necessary to comply with ORS 197.296. McMinnville made several findings regarding future trends in its *Housing Needs Analysis*, acknowledged by LCDC in the 2004 proceedings:

- Single family lots are getting smaller.
- In 1990, McMinnville had a greater percentage of persons in poverty than the state average.
- In the McMinnville region, service-related jobs at lower wages will increase, which "will reduce households' ability to purchase housing and could increase the affordability gap."

The *Housing Needs Analysis (HNA)* also found that 53% of McMinnville's current residents are low income, very low income, or extremely low income. (Table 5-18) Nearly 25% of city households cannot afford a studio apartment at fair market rent levels, and more than 35% of city households cannot afford a two-bedroom apartment. The *Analysis* found that in the future, it is likely that smaller houses, smaller lots, attached single family housing, apartments, and manufactured housing will be needed to meet changing housing needs.

As noted in our first objection, the city's revised housing needs analysis determined a need for a new high-density multi-family zone to accommodate 18% of all needed housing, based in part on an assessment of income levels, housing affordability and efficient land use.<sup>16</sup> While the city has created a new R-5 zone within the city's zoning code, the city's decision does not actually apply the zone anywhere to even a single acre of land.

Also, as noted in our second objection DLCD has previously determined that

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<sup>16</sup> MGMUP, p. B-9

"The issue, then, is whether lots ranging from 8,400 to 4,200 square feet are consistent with the medium-density housing products defined... (small lot single-family detached, single-family attached, duplexes, triplexes, and townhouses), and whether housing products typically located on lots that are up to but less than 4,200 square feet are consistent with high-density housing products as those are defined... (townhouses, condominiums, and apartments)."

"A small lot in this vicinity can be considered to range from 4,500 to 6,000 square feet, which equates to approximately eight dwelling units per net acre."

"Similarly, townhouses are commonly provided on lots ranging from 2,000 to 3,000 square feet. This equates to densities ranging from 14 to 22 dwelling units per net acre. Therefore, while the city's definition of medium-density development is stated to range from four to eight dwelling units per acre, the characteristic housing types listed are more commonly found to range from seven to 20 units per net acre. The plan is internally inconsistent."

For these reasons, the city's submittal violates Goal 2, Goal 14, Goal 10 and ORS 197

**Remedy:**

The Commission should direct the City of McMinnville to implement the efficiency measures detailed in our objections or alternatively, explain why they are not reasonable.

**OBJECTION 6: PLAN POLICY 188.05 ALLOCATES AN EXCESSIVE AMOUNT OF LAND FOR THE PROJECTED BUILT COMMERCIAL AND OFFICE SPACE IN NEIGHBORHOOD ACTIVITY CENTERS.**

ISSUE: IS AN EXCESSIVE ALLOCATION OF LAND FOR THE PROJECTED BUILT COMMERCIAL AND OFFICE SPACE IN NEIGHBORHOOD ACTIVITY CENTERS CONSISTENT WITH THEIR STATED PURPOSE; TO BE "COMPACT, PEDESTRIAN-FRIENDLY, AND TRANSIT-SUPPORTIVE?" IS IT CONSISTENT WITH GOAL 14?

Goal 2 and Goal 14 require the city to adopt a plan and regulations that are consistent and that use land efficiently. Because plan policy 188.05 calls for a very large amount of land for the projected amount of built employment space within Neighborhood Activity Centers the city's submittal fails comply with these goals.



Plan Policy 188.05 (MGMUP, p. D-20) calls for 5 to 10 acres of land in each NAC to accommodate 50,000 to 100,000 sq. ft. of retail floor space and an additional 2.5 to 10 acres to accommodate 25,000 to 100,000 sq. ft. of office. These translate into floor area ratios of .23.

Although the department agrees, "that FARs of about .23 are relatively auto-oriented," the department rejects our objection because,

"...outside of downtown areas, average FARs of about 0.25 FAR for retail uses and 0.35 FAR for office uses are not typically exceeded in most small-to medium sized communities, including those served bus service."

The department also cites the importance of design standards in "assuring safe, convenient, and direct pedestrian circulation."

This response misses the point of our objection.

A. The NACs are not typical areas. The adopted plan defines them as "compact, pedestrian-friendly, and transit-supportive." While design standards may make commercial and office development more safe and convenient, they will not make it more compact or assure a transit-supportive density of development. The inefficient, auto-oriented ratio of land to commercial buildings and to office buildings contained in policy 188.05 is inherently inconsistent with the city's intent for the NACs to be "compact, pedestrian-friendly, and transit-supportive."

B. As the department notes, FARs for office are typically much higher than commercial FARs but the city has allocated land to offices as though it were retail development.

C. The city has not adopted any findings explaining why such an excessive amount of land is needed to accommodate the projected amount of building space.

In reviewing the city's overall employment needs DLCD previously noted:

"It is reasonable to believe that the city can accommodate the projected commercial and office need on less land and, to comply with Goal 14 and the "exceptions" standards, it is incumbent on the city to do so. The department recommends the Commission remand the commercial land needs analysis to be revised to maximize efficiency as required by Goals 2 and 14."<sup>17</sup>

For these reasons, the city's submittal violates Goal 2 and Goal 14.

**Remedy:**

<sup>17</sup> DLCD Response to Objections, March 30, 2004, p. 6.

The Commission should remand the MGMUP with instructions to amend Policy 188.05 and related sections of the MGMUP to maximize efficiency of employment land within Neighborhood Activity Centers consistent with compact, pedestrian-friendly, and transit-supportive development. Since this will result in a reduced land need the Commission should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.

**OBJECTION 7: THE CITY HAS OVERALLOCATED LAND FOR COMMERCIAL AND OFFICE EMPLOYMENT USES CITYWIDE**

ISSUE: CAN THE CITY'S ALLOCATION OF LAND TO COMMERCIAL AND OFFICE USES EXCEED ITS 20-YEAR PROJECTION OF NEED? IS THERE AN ADEQUATE FACTUAL BASE FOR THE CITY'S ASSUMPTION THAT OFFICE EMPLOYEES WILL NEED AS MUCH LAND PER EMPLOYEE AS COMMERCIAL EMPLOYEES?

In 2004 DLCD recommended "the Commission remand the commercial land needs analysis to be revised to maximize efficiency as required by Goals 2 and 14."<sup>18</sup> The city agreed to a remand of its economic opportunities analysis to provide an adequate factual base.

The city's current decision eliminates from the Economic Opportunities Analysis and MGMUP various references to floor area ratios and employees per square foot but otherwise leaves the amount of land allocated to commercial employment, including office employment, unchanged. The city's current decision relies on employee per acre assumptions.

These amendments do not bring the submittal into compliance with Goals 2 and 14 for two reasons:

- A. The city has allocated more acres of vacant land to new commercial and office uses than its employee per acre assumptions call for.
- B. The city has assumed office employees will need as much land per employee as commercial employees.

The department's response to our objection misses the first point and ignores the second point.

*A. Over-allocation of land*

Based on employee per acre assumptions adjusted for vacancy, the city has calculated that it will need 88.6 acres of vacant land for new commercial uses and 85.0 acres of vacant land for new office uses over the planning period.<sup>19</sup> This is a total of 173.6 acres.

<sup>18</sup> DLCD Response to Objections, March 30, 2004, p. 6

<sup>19</sup> Addendum to MGMUP, pp. 5-7

The city has allocated 193 acres rather than 173.6 acres to new commercial land for commercial and office uses and has based its UGB amendment on this higher number.<sup>20</sup> The city's submittal does not explain this discrepancy. This 11% over-allocation inflates the size of the UGB expansion by about 20 acres.

The department's rejects our objection, finding that the estimated need for 173.6 acres is reasonable and supported by the evidence. This misses the point of the objection. While the city estimated its commercial land needs at 173.6 acres, it allocated 193 acres to the category without explanation and based its UGB expansion on this higher number without explanation.<sup>21</sup>

*B. Office employees per acre*

The city has projected new office employment at 22 employees per acre, the same figure it has used for commercial employees.

As DLCD noted in its 2004 response to objections:

"...while retail commercial uses are typically one story with large amounts of space devoted to parking and the display of goods, office uses are very different. Office uses can be multi-story and can accommodate more employees in a given floor space than retail uses. Office uses have more in common with public uses... than with retail commercial uses."<sup>22</sup>

The city has projected public uses at 35 employees per acre. The city has not explained why new office employment will more closely resemble commercial uses in its land needs than public uses.

As DLCD previously concluded, the city can accommodate the projected commercial and office need on less land and, to comply with Goal 14 and the "exceptions" standards, it is incumbent on the city to do so. For this reason, the city's submittal violates Goals 2 and 14 and ORS 197.732.

**Remedy:**

**Consistent with the department's previous recommendation, the Commission should remand the *MGMUP* with instructions that the commercial land needs analysis be revised to maximize efficiency as required by Goals 2 and 14. Since this will result in a reduced land need the Commission should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.**

<sup>20</sup> *MGMUP*, p. B-21. Additional public and semi-public uses bring the total allocation to 219.1 acres.

<sup>21</sup> *MGMUP*, p. B-21.

<sup>22</sup> DLCD Response to Objections, March 30, 2004

**OBJECTION 8: THE CITY HAS NOT JUSTIFIED THE AMOUNT OF BUILDABLE LAND INCLUDED IN THE UGB EXPANSION FOR PARKS, NOR ADEQUATELY CONSIDERED THE IMPACT OF SHARED FACILITIES ON NEEDED PARK ACREAGE**

ISSUES: IS THERE AN ADEQUATE FACTUAL BASIS TO CONCLUDE THAT 30% OF ALL BUILDABLE LAND IN THE UGB EXPANSION WILL BE ACQUIRED FOR COMMUNITY AND NEIGHBORHOOD PARKS? IS ALLOCATING 100% OF NEIGHBORHOOD AND COMMUNITY PARKS TO BUILDABLE LAND CONSISTENT WITH PLAN POLICIES THAT CALL FOR THEM TO INCORPORATE UNBUILDABLE LAND? CAN THE CITY MAKE FINDINGS REGARDING SHARED FACILITIES THAT ARE UNSUPPORTED BY EVIDENCE IN THE RECORD AND CONTRADICTED BY EVIDENCE IN THE RECORD?

*A. Is there an adequate factual basis to conclude that 30% of all buildable land in the expansion will be acquired for community and neighborhood parks?*

About 30% of all gross buildable land included in the proposed UGB expansion is for community and neighborhood parks. Throughout the local process, the city has included all community and neighborhood parkland in the category of buildable residential acreage despite a past history of locating these park types partially on unbuildable land.

The City has not adopted any land use measures to protect this proposed acreage for eventual park use, nor has the City proposed any funding mechanism to purchase this amount of buildable acres of parkland over the next 17 years. It is therefore clear that a large portion of the UGB expansion purportedly for parkland will instead be converted to residential uses.

The department rejects our objection, concluding that a bond measure (\$9.5 million, much of which is spent) and SDC's provide a reasonable ability to fund the park acquisition. There is no evidence in the record to support this conclusion.

The adopted parks plan includes an estimated cost of \$52 million to acquire 180 acres of land. It includes no financing mechanism to acquire this land. Since adoption of the parks master plan six years ago, the City has acquired only about 20 acres of buildable land for parks, at a cost of \$73,000 per acre, funded by a 20-year bond measure.<sup>23</sup> The City would need to acquire this much buildable land every year through the planning period to acquire the remaining acres of the UGB expansion that is purportedly for parks. The City has not proposed another parks bond measure before the current one is retired, nor has the City proposed assessing System Development Charges that are anywhere near adequate to cover the cost of acquisition, let alone the additional cost of park development.

<sup>23</sup> See newspaper article attached to objections filed February 3, 2006. In addition to the approximately 15 acres of buildable land in Discovery Meadows, the city has also acquired Thompson Park, approximately 3 acres in size.

Goal 2 requires consistency among the city's various planning documents. The financing section of the Parks Master Plan includes no plan to finance the acquisition of 30% of the buildable land added to the UGB.

Goal 2 requires that plans have an adequate factual basis. There is not an adequate factual basis to conclude that the City can acquire 30% of the buildable acreage in the UGB expansion for use as community and neighborhood parks.

In addition, Goal 14 requires UGB amendments to consider the orderly and economic provision of public facilities and services, the maximum efficiency of land uses within and on the fringe of the existing urban area, and the retention of agricultural land. Recent amendments to Goal 14 require Comprehensive Plans and implementing measures to manage the use and division of urbanizable land to maintain its potential for planned urban development. The city's decision violates these provisions of Goal 14 for the reasons stated above.

*B. Is allocating 100% of neighborhood and community parks to buildable land consistent with plan policies that call for them to incorporate unbuildable land?*

Goal 2 requires internal consistency within the city's plan. In this decision, the city allocates 100% of neighborhood and community park needs to buildable land and adopts a new plan policy (Policy 163.05) to require that future community and neighborhood parks be located above the boundary of the 100-year floodplain. Other plan policies and implementing regulations explicitly call for locating some portion of community and neighborhood parks on unbuildable land, including floodplain land and wetlands that may not be in the floodplain. New plan policy 163.05 and the allocation of 100% of neighborhood and community parks to buildable land are inconsistent with these other plan policies and implementing regulations:

"A community park should... incorporate identified wetland corridors"  
(Plan Policy 188.15) <sup>24</sup>

"A neighborhood park should be located adjacent to the South Yamhill River." (Plan Policy 188.31) <sup>25</sup>

"Consistent with the Parks, Recreation and Open Space Master Plan a neighborhood park should be located within the central portion of the [SW] sub-area... The wetland areas should be incorporated into the park, as practical." (Plan Policy 188.36) <sup>26</sup>

<sup>24</sup> Plan Policy 188.15, MGMUP p. D-21 and Neighborhood Activity Center Planned Development Ordinance, MGMUP p. E-12

<sup>25</sup> Plan Policy 188.31, MGMUP p. D-23 and Neighborhood Activity Center Planned Development Ordinance, MGMUP p. E-13

<sup>26</sup> Plan Policy 188.36, MGMUP p. D-24 and Neighborhood Activity Center Planned Development Ordinance, MGMUP p. E-14

The department's response to our objection merely notes the adoption of policy 163.05 and does not address its inconsistency with these other plan policies.

### *C. Shared Facilities*

1000 Friends and objector Mark Davis contend that parkland needs should be reduced to account for shared facilities with schools. The city's UGB amendment assumes 96 vacant buildable acres will be used for new public schools over the planning period.<sup>27</sup> The city has an intergovernmental agreement with the school district to share recreational facilities. Evidence in the record shows that school facilities currently used by residents and by park programs include fields for soccer, baseball, tennis, and informal recreation etc.<sup>28</sup> Several new schools are planned for areas of new residential development. At the final hearing the City Manger testified that such partnering would continue in the future.

The department rejects our objection because, "the city made findings related to shared facilities." This misses the point of our objection. We do not assert that the city made no findings, but rather that there is no evidence to support the finding. In fact, the evidence in the record supports the opposite conclusion:

The city found:

"The residents of McMinnville enjoy many of the athletic facilities available on McMinnville School District and Linfield College campus property. These include gymnasiums, track stadiums (for football) and field house (swimming, diving)."<sup>29</sup>

The evidence shows that in addition to the above uses these also include fields for soccer, baseball, tennis, and informal recreation.

Undeveloped land in the proposed Northwest Neighborhood Activity Center includes a new high school site and a new elementary school site.<sup>30</sup> Undeveloped land adjacent to the proposed Grandhaven Neighborhood Activity Center includes a new middle school site and an existing elementary school.<sup>31</sup> The school district recently acquired a site for another new school at the southern edge of the city.<sup>32</sup>

Clearly, some, but not all, of the need for formal and informal recreation facilities associated with Community and Neighborhood Parks can be met on the new school sites planned within or adjacent to the areas of proposed new residential development.

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<sup>27</sup> MGMUP, p. B-21

<sup>28</sup> See attachment to objections filed February 3, 2006

<sup>29</sup> Ordinance 4840, p. 11

<sup>30</sup> MGMUP p. 7-9

<sup>31</sup> MGMUP pp. 7-11 to 7-12

<sup>32</sup> News-Register article submitted to local record, "District acquires southeast school site" July 15, 2003

Because the city's findings are not supported by evidence in the record, because the city's plan and UGB expansion lack an adequate factual basis regarding shared park facilities, and because the city has failed to reduce its parkland need to account for shared facilities the city's submittal violates Goal 2 and Goal 14.

**Remedy:**

For these reasons, the Commission should remand the *MGMUP* with instructions to revise its assumptions regarding needed parkland to reflect realistic assumptions for which there is an adequate factual basis; resolve internal inconsistencies; and reduce the planned need for buildable land for neighborhood and community parks to account for the potential for sharing park facilities with the School District and Linfield College. Since this will result in a reduced land need the Commission should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.

At a minimum, to ensure urbanizable land to maintain its potential for *planned* urban development, the Commission should remand the *MGMUP* with instructions to adopt a plan policy requiring that 30% of the buildable acreage added to the UGB not be annexed for any use other than neighborhood and community parks.

**OBJECTION 9: THE CITY HAS SIGNIFICANTLY UNDERESTIMATED THE DEVELOPMENT CAPACITY OF THE RIVERSIDE SOUTH AREA, WHICH IS NOW WITHIN THE CITY'S ACKNOWLEDGED UGB.**

ISSUE: IS A 55-ACRE TRACT WITH ONE STRUCTURE TOO HEAVILY PARCELIZED TO ACCOMMODATE ANYTHING OTHER THAN LOW DENSITY SINGLE-FAMILY DEVELOPMENT?

Under Goal 14, Goal 2, ORS 197.296, and ORS 197.732 the city is required to justify the amount of land added to its UGB, to use urban land efficiently, and to have an adequate factual basis for its plan and for its adopted findings..

The Riverside South area was added to McMinnville's UGB as part of the city's 2003 submittal and along with Fox Farm Road and Redmond Hill Road its inclusion was acknowledged by LCDC.

The area contains large tracts of vacant land including a contiguous block of over 55 acres that is traversed by a designated major collector and contains only one existing structure in the extreme northeast corner. The large undeveloped areas are evident in the photographs we submitted with our objections and in the aerial photograph in the *MGMUP* at page C-57.

Despite these large vacant tracts, the city has assumed the area will develop with a gross density of only 4.3 dwelling units/gross buildable acre. The plan states, "it is recommended that residential development in this subarea be limited to density commensurate with the R-2 (Single-Family Residential zone.)"<sup>33</sup> This is significantly less than the "needed density" determined in the city's housing needs analysis.

Other areas within the existing UGB are assumed to develop at 5.7 dwelling units/gross buildable acre and other large vacant expansion areas are assumed to develop at 6.3 dwelling units/gross buildable acre.

Although the plan contains conclusory statements regarding the desires of existing residents in the area to maintain a rural lifestyle and cites the potential for new residents to object to other existing uses in the vicinity, the city did not adopt findings, as required by Goal 2, Part II, (c), as to why these included areas cannot reasonably accommodate more of the identified need for residential land and thus reduce the need to include lower priority resource land.

The department rejects our objection because:

"It is to be expected that the density in exception areas will be less than what would be achieved on large parcels. The city has shown the pattern of lots and dwellings for each exception area in Appendix C. In many of these areas, the pattern of small lots means future development will occur through partitions rather than the more efficient subdivision process which is possible where there are larger parcels to divide."

These general conclusions regarding generic exception areas fail to address the specific facts of the Riverside South area. This response misunderstands the specific facts of the Riverside South area, which contains large parcels.

The city has underestimated the capacity of the Riverside South area. The city has not planned for efficient use of urban land or provided an adequate factual basis for its plan.

The size of the proposed UGB expansion has not been justified and the city's submittal violates Goal 2, Goal 14 and ORS 197.296

#### **Remedy:**

The Commission should remand the *MGMUP* with instructions to plan for Riverside South to develop at densities equivalent to other vacant areas within the existing city or within other large vacant expansion areas or provide an adequate factual basis and explanation for assuming it will not. Since this will likely result in a reduced land need the Commission should further direct McMinnville to make a corresponding reduction in the size of its UGB expansion.

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<sup>33</sup> *MGMUP*, p. 6-12



**OBJECTION 11: THE CITY HAS FAILED TO ACCOUNT FOR A UGB EXPANSION MADE SINCE 2003 OUTSIDE THE MGMUP PROCESS.**

**ISSUE: CAN THE CITY IGNORE AN INTERIM UGB AMENDMENT THAT OCCURRED THOROUGH THE POST- ACKNOWLEDGMENT PLAN AMENDMENT PROCESS?**

Under Goal 14, Goal 2, and ORS 197 the city is required to justify the amount of land added to its UGB, to use urban land efficiently, and to have an adequate factual basis for its plan and for its adopted findings to justify an exception.

In 2004, McMinnville expanded its UGB to include 35 commercially zoned acres for future expansion of the Evergreen Air Museum. The UGB was expanded through the post- acknowledgment plan amendment process and the land involved was not included or analyzed in either the 2003 version or the current version of the *MGMUP*.

The city's submittal does not address the impact of this 35 acre UGB expansion on the amount of land in the existing UGB or the impact, if any, on the amount additional land needed for future employment growth. For these reasons, the city's submittal violates the goals and statutes.

The department rejects our objection, concluding that the 35 commercially zoned acres does not affect the employment land needs contained in the current UGB proposal. This may or may not be the case; there is no evidence in the city's submittal or in the local record to support the department's conclusion. The department's response misunderstands the responsibilities of local jurisdiction as well as its own responsibilities.

First, the department does not dispute that the city failed to consider the added acreage or reach any conclusion regarding the affect this UGB amendment has on employment land needs. It is the responsibility of the local jurisdictions to consider the added acreage and its impact; it is the department's responsibility to review that local consideration.

Second, the department has an obligation to base its conclusions on evidence in the record. In this case, there is none.

**Remedy:**

**The Commission should remand the UGB amendment with instructions to either account for the employment growth that will be absorbed on these 35 acres or explain why it will not absorb any of the identified employment growth.**

**OBJECTION 12: MCMINNVILLE'S UGB EXPANSION INCLUDES PRIME FARMLAND INSTEAD OF HIGHER-PRIORITY EXCEPTION AREAS AND AREAS OF POORER SOILS. FOR SEVERAL EXPANSION**

**AREAS THE CITY HAS NOT ANALYZED THE COMPATIBILITY OF  
PROPOSED USES WITH NEARBY FARM AND FOREST ACTIVITY.**

ISSUES: WHAT CONSTITUTES VALID REASONS FOR CONCLUDING THAT A HIGHER-PRIORITY AREA CANNOT REASONABLY ACCOMMODATE AN IDENTIFIED LAND NEED? WHAT CONSTITUTES AN IDENTIFIED LAND NEED? DOES THE CITY NEED TO ANALYZE THE COMPATIBILITY OF PROPOSED USES WITH NEARBY FARM AND FOREST ACTIVITY FOR ALL EXPANSION AREAS AS REQUIRED BY GOAL 14? DOES SUCH AN ANALYSIS NEED TO CONSIDER THE ACTUAL BOUNDARY ADOPTED BY THE CITY? DOES THE CITY NEED TO CONSIDER ALL LANDS ADJACENT TO ITS EXISTING UGB IN A COORDINATED LAND PRIORITY ANALYSIS? DO THE CITY'S DECISION AND FINDINGS NEED TO BE BASED ON EVIDENCE IN THE RECORD?

The City has not included hundreds of buildable acres of land in adjacent exception areas and hundreds of buildable acres of land in adjacent areas with poorer soils within the expanded UGB. Instead, the city plans extensive new development on prime farmland west, east, north and south of the existing boundary. This includes extensive new residential and commercial development south of the Highway 18 bypass around McMinnville, creating a potential traffic nightmare.

Furthermore, the city has not conducted a coordinated land priority analysis around the entire UGB perimeter, nor has it analyzed the compatibility of proposed uses with nearby farm and forest activity for several areas it included in the UGB expansion.

For these reasons, the city's submittal violates ORS 197.298, Goal 14, ORS 197.732(1)(c)(B) and Goal 2, Part II(c).

ORS 197.298 and Goal 14 provide specific criteria to apply when amending a urban growth boundary.

Under ORS 197.298, lower priority lands can only be included in the UGB if specific types of identified land needs cannot be reasonably accommodated on higher priority lands.

Similar criteria are found in Goal 14. In addition, Goal 14 also requires consideration of the compatibility of the proposed uses within the new urban areas with nearby agricultural activities.

*A. Excluded "Exception Areas"*

The City's UGB expansion *excludes* over **225 BUILDABLE** acres of exception land in 5 areas. Under ORS 197.298, exception land must be included in a UGB instead of

resource land if it can reasonably accommodate some portion of identified needs,<sup>34</sup> which these areas can. It is always easier to urbanize flat farmland than exception areas. The 5 excluded exception areas are no different than any other exception areas in this regard. Resource areas with lower capability soils that McMinnville passed over in its UGB expansion include areas both east and west of the City.

The five passed-over exception areas are Old Sheridan Road, Bunn's Village, Riverside North, Booth Bend Road, and Westside Road.

#### Old Sheridan Road

The Old Sheridan Road exception area contains approximately 36.5 gross buildable acres and the sub-area is virtually flat.<sup>35</sup> Adjacent areas within the existing UGB are already developed or planned to develop with residential uses.<sup>36</sup>

The record does not support the city's findings that the Old Sheridan Road exception area cannot reasonably accommodate a portion of identified residential land needs.

DLCD rejected our objection because additional traffic would "necessarily" use Highway 18 for most trips so it could be excluded under ORS 197.298(3)(b). This response misconstrues the relevant facts.

Adjacent land already within the city is already developed with residential uses. We submitted photos and maps from the local record showing a stubbed local city road from this adjacent area to the Old Sheridan area. The city found that traffic from the Old Sheridan area would likely use Old Sheridan Road, another local street, not the highway.

There is no evidence to support the department's conclusion. As detailed in our objections, there is also no evidence to support city's findings regarding this exception area, either. The Old Sheridan Road area can reasonably accommodate some portion of the identified land need and the Commission should reject its exclusion from the UGB.

Bunn's Village. The Bunn's Village exception area contains approximately 126 gross vacant buildable acres.<sup>37</sup>

The record does not support the city's findings that the Bunn's Village exception area cannot reasonably accommodate a portion of identified residential land needs. This area can reasonably accommodate some portion of the identified land need.

<sup>34</sup> In *Residents of Rosemont v. Metro*, the Court of Appeals ruled the statute asks whether exception areas can accommodate the use at all, not whether they can do so as efficiently or beneficially as farmland.

<sup>35</sup> MGMUP, p. C-97

<sup>36</sup> MGMUP, p. C-100

<sup>37</sup> MGMUP, p. C-36

The department rejected our objection for two reasons; a) the department concludes the area cannot reasonably accommodate a neighborhood activity center and b) the department concludes that the area cannot reasonably be served by streets, water, and sewer.

*a. The department concludes the area cannot reasonably accommodate a neighborhood activity center.*

This response to our objection misconstrues the statutory requirement in ORS 197.298 and misunderstands both the nature of identified land needs and the facts relevant to this exception area.

First, the city's identified land needs are not limited to pedestrian- and transit-oriented development in neighborhood activity centers. Almost 2/3 of the additional land projected for housing beyond the 2003 UGB is for low-density single-family housing. The city identified a need for an additional 341 buildable acres beyond the 2003 UGB for low-density single-family housing in the R-1 and R-2 zones at densities of 3.5 and 4.3 units per gross acre.<sup>38</sup> This need for additional land for low-density single-family housing exceeds all the buildable land in all the exception areas included in the boundary expansion by approximately 115 acres.<sup>39</sup>

Under ORS 197.298, exception land must be included in a UGB instead of resource land if it can reasonably accommodate some portion of identified needs, which this area can. In *Residents of Rosemont v. Metro*, the Court of Appeals ruled the statute asks whether exception areas can accommodate the use at all, not whether they can do so as efficiently or beneficially as farmland.

Second, the department's conclusion regarding the area's ability to accommodate a neighborhood activity center is not supported by the facts. We note that the city itself made no such finding.

The photographs we submitted with our objections and in the aerial photograph in the *MGMUP* at page C-20 show an approximately 50-acre block of mostly undeveloped land south of the highway on either side of Youngman Road. This falls at the mid-range of the 28 to 70 acre combined focus and support area that the city found is optimal for an NAC.<sup>40</sup>

In addition, the response reaches conclusions regarding the commercial area of Bunn's Village that are unsupported by evidence. The response states:

<sup>38</sup> *MGMUP*, Table 11, p. B-15. This number must be adjusted slightly downward to account for efficiency measures identified in Table 16 of the *MGMUP* (p. 7-28.)

<sup>39</sup> *MGMUP*, p. 6-18

<sup>40</sup> Findings, p. 21

"To make this area pedestrian-friendly would require that speeds on the highway be reduced and stoplights be installed, severely impacting the function of the highway."<sup>41</sup>

The department does not explain why reducing speeds on the highway and installing stoplights would seriously impact its function. Nor is there any evidence in the record to support such a conclusion. Many state highways function with reduced speeds and stoplights (or pedestrian overpasses) within urban areas.

b. *The department concludes, "that this area cannot reasonably be served by streets, water, and sewer because of the separation from the rest of the city caused by the floodplain and the negative impact of the state highway."*

While the Response lists this as one reason, it can be divided into two: 1) whether or not this area can be reasonably be served with urban services; and 2) the impact of the state highway.

#### 1. Urban Services

Regarding urban services, the city concludes that, "urban services can be extended to this area... at a higher cost relative to other urbanizable areas."<sup>42</sup> The record contains no actual cost estimates or costs per buildable acre. As the department noted in its 2004 response to objections, while the standard "does not require the city to show that it is impossible to serve an exception area... the city needs to show, for residential uses for example, that the costs of serving new homes would too high to allow the development of housing at the price ranges and rent levels which are needed." The city has not made any such finding nor is there evidence in the record to support such a finding.

It will almost always be cheaper to extend urban services into prime flat farmland than exception areas. A higher relative cost does not mean the higher priority exception area cannot reasonably accommodate the identified need. In this case, however, *there is no evidence in the record to conclude that the cost of infrastructure in Bunn Village will be high per buildable acre or housing unit.*

The record contains no cost estimates to support the conclusion that the cost of providing urban services will be high nor does it quantify how much higher the relative costs will be. In fact, the *MGMUP* states that the cost of sewer "have not been calculated," and cost of water service, "have not been determined."<sup>43</sup>

Since the city did not determine the cost of providing urban services to Bunn village in the aggregate, per buildable acre basis, or per housing unit, neither the city nor the department can conclude those costs are high per buildable acre or housing unit.

<sup>41</sup> Response, p. 39

<sup>42</sup> *MGMUP*, p. C-27

<sup>43</sup> *MGMUP*, p. C-29

In addition, our objection points out that the "leg" of Hawn Creek Road includes only 16.52 buildable acres and the city failed to consider the possibility of including only the approximately 110 net buildable acres in the non-linear portion of Bunn Village closer to the city. This would eliminate approximately one mile of extension of services and significantly reduce the cost of services per buildable acre and per housing unit.

The response does not address this portion of our objection.

The department also cites the cost of extending water and sewer across the North Yamhill River. The North Yamhill River is not the Willamette River. One can throw a stone across it. This is clearly illustrated in the photographs attached to our objections. Figure 18 at page C-42 of the *MGMUP* shows it as approximately 50 feet wide.

## 2. Impact of the state highway

The response overstates ODOT's position in asserting, "ODOT has stated its opposition to the inclusion of this area in the UGB."

While ODOT stated that it did not support inclusion of Bunn's Village, its letter did not say it opposed it.. In its letter to the city, ODOT also said:

"Increased development/redevelopment that could be encouraged in this area *may* adversely affect traffic safety and operations on OR 99W."  
(emphasis added)

"If the City chooses to include this area in a UGB expansion, ODOT strongly recommends that an overlay, or conditions of approval, be adopted that require the City and ODOT to adopt an access management plan for 99W prior to the development or redevelopment of any parcels within Area NR-8. This will identify highway improvements required as a result of future development that will ensure that safety and traffic operations are maintained at an acceptable level."<sup>44</sup>

Its letter states that with an access management plan and highway improvements, the function of the highway could be maintained at an acceptable level.

The DLCD Response also states:

"If this area were to develop, the city would need to provide alternate local street connections to the remainder of the city rather than rely on just the state highway. Providing alternate street connections is not reasonable since each connection would require a bridge crossing of the river and floodplain."

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<sup>44</sup> *MGMUP*, p. C-209

The North Yamhill River is not the Willamette River. One can throw a stone across it. Bridgeheads are frequently located within a one hundred year floodplain. There is no evidence to support a finding that construction of a new bridge for local access separated from 99W is unreasonable nor is there anything to suggest that more than one new bridge for local access would be needed.

As the department noted in its 2004 response to objections, while discussing a different exception area:

“The need to replace the bridge... is only sufficient to disqualify the area if (1) the bridge would not need to be replaced if the area is not included in the UGB and (2) the portion of the bridge cost that can be allocated to these [buildable] acres is too high to be incorporated into the sales prices of new homes.”

There is no evidence to suggest this test is met.

Resource land cannot be included within the expanded UGB and Bunn's Village excluded simply because major street, water and sewer improvements are required to urbanize the 126 buildable acres in Bunn's Village. Major street, water and sewer improvements are almost always required when large areas are urbanized. Bunn's Village is no different in this respect. The Three Mile Lane area included within the UGB contains just a little more buildable land than Bunn's Village, 157 gross vacant buildable acres. Highway 18 is much wider than the North Yamhill River.<sup>45</sup> Major street, water and sewer improvements must be extended under Highway 18 to urbanize this prime farmland.

To include Three Mile Lane and other resource areas in the UGB while excluding Bunn's Village would violate ORS 197.298. The Commission should reject its exclusion from the UGB.

#### Riverside North

We objected to the exclusion of the Riverside North exception area. The city found that it could not reasonably accommodate any residential use because of conflicting adjacent industry.

Our objection points out that it could either a) meet identified needs for commercial or office uses;<sup>46</sup> or b) be brought in as industrial land (the city has a surplus of industrial land) and other vacant industrial land could be rezoned for residential or commercial use.

DLCD rejected our objection because, “This location area is not suitable for residential use.” This response misconstrues the statutory requirements of ORS 197.298.

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<sup>45</sup> Testimony in local record, attached to our objections

<sup>46</sup> The city has identified a need for 173.6 acres of new commercial land for commercial and office uses.

Under ORS 197.298, resource land cannot be included in a UGB instead of exception land if the exception land can reasonably accommodate some portion of identified needs. It cannot be excluded simply because it cannot meet one type of identified land need.

### Booth Bend Road

The Booth Bend Road exception area contains approximately 13 gross vacant buildable acres.<sup>47</sup> Adjacent areas within the existing UGB are developed residential areas.<sup>48</sup>

The record does not support the city's findings that the Booth Bend exception area cannot reasonably accommodate a portion of identified land needs.

The department rejected our objection because, "it will be an isolated extension of the UGB across the highway, making walking extremely difficult." This response misconstrues the facts regarding this exception area.

The exception area is already linked to the rest of the city by a bridge across the highway.<sup>49</sup> It is approximately 250 feet from the edge of the exception area to the existing city limits.<sup>50</sup> The department does not explain why it is "extremely difficult" to walk 250 feet.

It is less than 1000 feet from the edge of the exception area to the future elementary school site purchased by the school district in 2003.<sup>51</sup> The department does not explain why it is "extremely difficult" to walk less than 2/10 of a mile to the school.

The department also cites the Commission's North Plains decision. Unlike North Plains, McMinnville's pre-expansion UGB *already* extends across Highway 18. In fact, this UGB amendment includes additional hundreds of acres prime farmland on this same side of Highway 18.

While the Booth Bend area by itself is too small to accommodate a Neighborhood Activity Center the evidence in the record does not support a finding that the Booth Bend Road exception area could not reasonably accommodate a portion of identified residential or employment land needs.

The Commission should reject its exclusion from the UGB.

### Westside Road

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<sup>47</sup> MGMUP, p. C-88

<sup>48</sup> MGMUP, p. C-84

<sup>49</sup> MGMUP, p. C-85

<sup>50</sup> MGMUP, p. C-85

<sup>51</sup> News-Register article, attached to objections filed February 3, 2006.



The city identified a need for an additional 341 buildable acres beyond the 2003 UGB for low-density single-family housing in the R-1 and R-2 zones at densities of 3.5 and 4.3 units per gross acre.<sup>52</sup> This need for additional land for low-density single-family housing exceeds all the buildable land in all the exception areas included in the boundary expansion by approximately 115 acres.<sup>53</sup>

The evidence in the record does not support a finding that the Westside Road exception area could not reasonably accommodate a portion of identified residential land needs.

The department rejected our objection, because:

"This is a small exception area that lies between a creek and a state highway. The city excluded this area from the UGB, based on substantial evidence that the area cannot reasonably be served with local streets. This meets the standard in ORS 197.298(3)(b) to exclude the area... The other small 'strips and patches' of exception areas adjacent to state highways cannot reasonably accommodate urban uses... lack of a local street in this area would necessitate more driveways onto the highway."

This response reflects a misunderstanding of the facts and the record.

Westside Road is *not* a state highway. Westside Road is a *county road* under county jurisdiction classified as a collector. The *MGMUP* identifies Westside Road as a county road.<sup>54</sup> Neither the *MGMUP* nor the city's findings at any point assert that it is a state highway. The department has misunderstood the facts and their misunderstanding results in the wrong conclusion.

For the reasons detailed in our objections, the Westside Road exception area can accommodate some portion of identified land needs and the Commission should reject its exclusion from the UGB.

*B. Excluded Resource Areas*

As previously noted, under ORS 197.298 and Goal 14, if the UGB is amended to include resource lands, the city must look first to land of lower capability soils and only include more productive soils if identified land needs cannot be reasonably accommodated on the less productive soils. The proposed UGB amendments fail to comply with these criteria.

There are extensive areas of poorer quality soils adjacent to the existing UGB, particularly to the west of Hill Road as well as smaller areas north and east of the airport and between the two Riverside exception sub-areas. Most of the resource land proposed for inclusion in the UGB is classified as prime farmland, with Class I and II soils. The

<sup>52</sup> *MGMUP*, Table 11, p. B-15. This number must be adjusted slightly downward to account for efficiency measures identified in Table 16 of the *MGMUP* (p. 7-28.)

<sup>53</sup> *MGMUP*, p. 6-18

<sup>54</sup> *MGMUP*, p. C-13

city failed to include less productive resource areas without an adequate factual basis resulting in violations of both statute and rule.

### West Hills

The area referred to as the "West Hills" in the current amendments to the *MGMUP* contains two distinct areas. A crescent-shaped area of steep slopes and lands west of and beyond that crescent defines the upper West Hills area, which is generally more distant from the UGB.<sup>55</sup> We agree with the conclusion that lands within and beyond this crescent cannot reasonably accommodate identified land needs.

The lower West Hills area is more gently sloped and is adjacent to the existing UGB. It contains approximately 200 acres with slopes ranging upward from 7%.<sup>56</sup> Soils in this lower area are predominantly Class III.

We objected to exclusion of these approximately 200 acres of resource land with poorer soils.

The department rejected our objection because:

"[T]he city has identified a specific need, namely medium- and high-density housing and that location is outside the planned NAC, creating a satellite with no pedestrian access to shopping or other commercial services."

This response to our objection misconstrues the statutory requirement in ORS 197.298 and misunderstands both the nature of identified land needs and the facts relevant to this exception area.

First, the city's identified land needs are not limited to pedestrian- and transit-oriented development in neighborhood activity centers. As our objection pointed out, the city has specific, identified land need for low density housing that exceeds the capacity of all the exception areas it has included within the UGB.

Almost 2/3 of the additional land projected for housing beyond the 2003 UGB is for low-density single-family housing. The city identified a need for an additional 341 buildable acres beyond the 2003 UGB for low-density single-family housing in the R-1 and R-2 zones at densities of 3.5 and 4.3 units per gross acre.<sup>57</sup> This need for additional land for low-density single-family housing exceeds all the buildable land in all the exception areas included in the boundary expansion by approximately 115 acres.<sup>58</sup> The city has also identified a need for hundreds of acres of buildable land for parks.

<sup>55</sup> "Composite Constraints and Soils Map" produced by city staff, attached to objections filed February 3.

<sup>56</sup> Amendments to findings, p. 11

<sup>57</sup> *MGMUP*, Table 11, p. B-15. This number must adjusted slightly downward to account for efficiency measures identified in Table 16 of the *MGMUP* (p. 7-28.)

<sup>58</sup> *MGMUP*, p. 6-18

Under ORS 197.298, land with poorer soils must be included in a UGB instead of resource land with better soils if it can reasonably accommodate some portion of identified needs, which this area can. The statute asks whether the higher-priority areas can accommodate the use at all, not whether they can do so as efficiently or beneficially as lower-priority areas.

Second, the conclusion that the slopes in the lower West Hills cannot accommodate medium or high-density housing is not supported by evidence in the record and is simply wrong. The *MGMUP* found a need for about 79 buildable acres beyond the 2003 UGB for medium-density housing at densities of 4 to 8 units per acre and a need for about 37 buildable acres beyond the 2003 UGB for high-density housing at densities greater than 8 units per acre.<sup>59</sup>

There is nothing inherent in slopes greater than 7% or even 20% that precludes development of housing at 4 to 8 units per acre or even more than 15 units per acre.

Astoria's higher density residential development is on its steepest slopes. Astoria's R-3 and R-2 zone are primarily located on slopes steeper than 10%. The R-3 zone allows up to 26 units per acre, greater density than permitted in any of McMinnville's existing or proposed zones. Astoria's R-2 zone allows up to 16 units per net acre.<sup>60</sup>

The photographic examples included with our objections of multi-family housing development on slopes ranging from 6% to over 20% debunk any notion that the lower West Hills cannot accommodate medium and/or high-density housing.

Third, while the department is correct that the area is outside of a planned NAC, the 200-acre area is of ample size to allow for development of either a neighborhood activity center or more limited non-residential services. The city obviously didn't plan for any non-residential services anywhere outside of the areas it chose to include in its UGB expansion. The department is essentially arguing that it can be excluded from the UGB simply because the city didn't plan to include it.

Moreover, the findings do not explain why the City could not plan for non-residential services closer to this area or why distance from services render 5,000 or 6,000 sq. ft. lots (the minimum lot sizes in the R-4 zone and R-3 zones) infeasible. At its closest, the area is with ½ mile of the new high school site.

For the reasons cited above, the lower West Hills can reasonably accommodate identified land needs and the Commission should reject its exclusion.

<sup>59</sup> *MGMUP*, Table 11, p. B-15. This number must adjusted slightly downward to account for efficiency measures identified in Table 16 of the *MGMUP* (p. 7-28.)

<sup>60</sup> see e-mail from Astoria's Planning Director, topographical map, and excerpts from Astoria's zoning code, attached to objections filed February 3, 2006

### Area North of Fox Ridge Road

The City proposes to include tax lot 4418-700 in the UGB and exclude all other areas of poorer soils north of Fox Ridge Road from the UGB expansion. In considering the area north of Fox Ridge Road, the city's findings and the department only discuss tax lot 700 and tax lots 4513-100 and 200. Additional higher priority land is located immediately west of tax lot 100, extending west to include additional broad areas of predominantly Class III soils between the floodplain and the area of steep slopes to the south. This higher priority area extends westward into a large exception area.<sup>61</sup>

The area includes several hundred acres of buildable land between the floodplain and the narrow band of unbuildable slopes over 25%. This area is up to 2000 feet wide and includes considerable amounts of land below the 275' elevation level that marks the service area under the existing municipal water system. It includes even more land below the 415' elevation level that marks the service area of the system's planned upgrade. (see various maps in record). On tax lots 100 and 200 the buildable corridor between the floodplain and the unbuildable 25% slopes ranges from approximately 700' to 1400' wide.<sup>62</sup>

This area can clearly accommodate identified land needs. In fact, in a November 30, 2005 memorandum, city staff recommended inclusion of a portion of the area (A 95-acre portion of tax lot 100).<sup>63</sup> The record does not support the reasons set forth for its exclusion by either the department or in the city's amendments to the *MGMUP* findings.

The department rejects our objection because it concludes that; a) the area will have limited future connectivity; b) the area is constrained by slope that leaves a limited building corridor; and c) the inclusion of tax lots 100 and the northern portion of tax lot 200 "would create an island of agricultural activity and cut off tax lots 1100 and 1000 from existing farm operations."

This response to our objection misconstrues the statutory requirement in ORS 197.298 and misunderstands both the nature of identified land needs and the facts relevant to this exception area.

The department's conclusions are incorrect. However, as a threshold matter, even if they were correct, under 197.298, land with poorer soils must be included in a UGB instead of resource land with better soils if it can reasonably accommodate some portion of identified needs, which this area can. The statute asks whether the higher-priority areas can accommodate the use at all, not whether they can do so as efficiently or beneficially as lower-priority areas.

*a. The department concludes that the area will have limited future connectivity.*

<sup>61</sup> see Yamhill County zoning maps attached to objections filed February 3, 2006

<sup>62</sup> "Composite Constraints and Soils Map" produced by City staff as a power point slide, attached to objections filed February 3, 2006.

<sup>63</sup> See attached excerpts from city staff memoranda October 14 and November 30, 2005

The record does not support this conclusion. The area could connect to Fox Ridge Road to the south, or connect to the west to Baker Creek Road through the road network in the Hidden Hills exception area. In fact, the City already owns one of the intervening parcels to the south.<sup>64</sup>

The area could also connect directly to Baker Creek Road to the north with the inclusion of a small area of floodplain.<sup>65</sup> The city's findings offer no explanation as to why such a northern connection is not possible and there is no evidence in the record to support the finding that it cannot.

*b. The department concludes that the area is constrained by slope that leaves a limited building corridor.*

As noted above, the buildable corridor in the area ranges from approximately 700 feet to 2000 feet in width. The department does not explain why they believe this a "limited corridor" that renders the area unable to accommodate identified land needs.

*c. The department concludes that the inclusion of tax lots 100 and the northern portion of tax lot 200 "would create an island of agricultural activity and cut off tax lots 1100 and 1000 from existing farm operations."*

This response reflects a misunderstanding of the relevant facts and evidence in the record.

If only the non-floodplain portions of TL 100 and 200 were included in the UGB, an island of farm parcels would not be created. This would only occur if the floodplain portions of TL 100 in the Baker Creek floodplain were included in the UGB. There is no reason to include this unbuildable floodplain portion of the tax lot (which is primarily Class I soils). In fact, city staff memoranda dated October 14 and November 30, 2005 recommended including the buildable portion of the tax lot south of the floodplain in the UGB, but not including the floodplain.<sup>66</sup>

Furthermore, the 69- acre "agricultural island" cited by the department is part of the Abrams Measure 37 claim. As the city memoranda indicate, the Abrams have received a waiver under Measure 37 for tax lots 4418-1000 and 1100. They have applied for and received approval for a subdivision plat on approximately 67 acres of these tax lots for lots as small as ½ acre. In addition, as also indicated in the staff memoranda, "the easternmost portion of the site is identified for future commercial development."

For the reasons cited above, the area north of Fox Ridge Road, including tax lots 200, 100 and land west of tax lot 100 can reasonably accommodate identified land needs. The Commission should reject its exclusion from the UGB.

<sup>64</sup> Testimony in the local record, attached to objections filed February 3, 2006.

<sup>65</sup> see Yamhill County zoning maps attached to objections filed February 3, 2006

<sup>66</sup> See attached excerpts from city staff memoranda October 14 and November 30, 2005

Area North of Highway 18 by Evergreen Aviation Museum

There is an approximately 35- acre area of predominantly Class III soils between the Evergreen Aviation Museum and Olde Stone Village. This land is virtually surrounded by the existing UGB.<sup>67</sup> Another area of Class III soils is adjacent to the other (west) side of the Air Museum.

We objected to the exclusion of this area. The department misread our objection and rejected it because it concludes that the area cannot accommodate an identified need for medium- and high-density housing, due to safety issues related to the airport, and can therefore be excluded in accordance with ORS 197.298(a)."

This response to our objection misreads our objection, misconstrues the statutory requirement in ORS 197.298 and misunderstands both the nature of identified land needs and the facts relevant to this exception area.

Our objection does not claim, as the response states, that the city failed to examine this area. Our objection instead points out that the city's findings lump this area in with other lands north of Olde Stone Village and east of the airport and reach several conclusions regarding all of these lands that are inapplicable and inaccurate regarding this specific area.

For example, the city's findings state, "[t]his land, if brought into the UGB would be actively farmed on three of its four sides.... Extension of public services would add pressure to urbanize adjacent resource lands in the future."<sup>68</sup> These finding are clearly inaccurate regarding this 35-acre area virtually surrounded by the existing UGB.

The findings reach conclusions regarding all of these lands based on the McMinnville Municipal Airport Master Plan and the traffic pattern associated with the downwind leg of Runway 4/22. These findings appear to be directed towards lands east of the airport and north of Olde Stone Village rather than this 35-acre area but because the evidence on which they are based is not in the record it is not possible to ascertain whether this is the case or to assess their accuracy.<sup>69</sup>

The department concludes that the area can be excluded because it cannot accommodate an identified need for medium- and high-density housing.

This response to our objection misconstrues the statutory requirement in ORS 197.298.

Under ORS 197.298, resource land cannot be included in a UGB instead of exception land if the exception land can reasonably accommodate some portion of identified needs. It cannot be excluded simply because it cannot meet one type of identified land need.

<sup>67</sup> see Figures 6 and 13 attached to ordinance 4841

<sup>68</sup> Amendments to findings, p. 7

<sup>69</sup> Amendments to findings, pp. 6-8

As our objection pointed out, the city has a specific, identified land need for low density housing that exceeds the capacity of all the exception areas it has included within the UGB. This need for additional land for low-density single-family housing exceeds all the buildable land in all the exception areas included in the boundary expansion by approximately 115 acres.<sup>70</sup>

In fact, the city's adopted plan allocates considerable amounts of low-density residential development to prime farmland proposed for inclusion in the boundary. Neither the city's findings nor the department consider whether some of this identified need for low-density residential land can instead be accommodated on this area of poorer soils nor do they consider or explain why the area cannot accommodate some other category of identified land need, such as offices.

For these reasons, the exclusion of the higher-priority land by the Air Museum has not been justified and the Commission should reject its exclusion.

#### Areas not analyzed by the city

1000 Friends and the Oregon Department of Agriculture testified regarding the need to comprehensively consider all lands adjacent to the existing UGB. As ODA stated, "a UGB land priority analysis needs to be coordinated around the entire UGB."<sup>71</sup> The lack of such analysis violates OAR 660, Division 4.

Our objections note several of these areas; the Riverside resource area, land south of the airport, and land south of Three Mile Lane that is west of the Booth Bend Road area.

The city has not included any analysis or adopted any findings regarding any of these areas, nor has the city explained why it has instead included other resource areas with Class I soils instead of these areas.

The department rejects our objection, concluding that the Riverside resource area cannot reasonably accommodate identified land needs. This may or may not be the case; there is no evidence in the city's submittal or in the local record to support the department's conclusion. The department's response does not address the other unanalyzed areas noted in our objection.

The department's response misunderstands the responsibilities of local jurisdiction as well as its own responsibilities.

The department does not dispute that the city and county failed to consider these areas or reach conclusions regarding them. Instead, the department reaches its own conclusion regarding just one of them.

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<sup>70</sup> MGMUP, p. 6-18

<sup>71</sup> ODA letter attached to objections filed February 3, 2006

It is the responsibility of the local jurisdictions to consider the lands surrounding its UGB; it is the department's responsibility to review that local consideration.

*C. Resource areas included in the UGB expansion*

Several of the resource areas included within the UGB are particularly problematic. Chief among these are the Three Mile Lane and the Southwest expansion areas. For these areas and for the Grandhaven and Norton Lane areas as well, the city has not satisfied the legal criteria necessary to justify their inclusion in the UGB.

For each of these four areas, the city has failed to consider the compatibility of the proposed uses within the new urban area with nearby agricultural activities, as required by Goal 14, Factor 7. The Oregon Department of Agriculture and 1000 Friends of Oregon testified in 2003 and in the recent remand hearings regarding the need for the city to address this criterion.

The city's sole finding of compatibility for all the expansion areas added to the boundary is the conclusory statement adopted in 2003 that:

"The Council concludes that the proposed expansion areas will not create compatibility conflicts between uses. Much of the existing UGB is adjacent to resource lands that are currently in agricultural uses. Expansion of the UGB would not create new uses that would create new types of compatibility issues."

Since adopting that finding the city:

- a) amended the boundary of the Three Mile Lane expansion area adopted in 2003. It previously bordered the Yamhill River. The amended boundary creates an unbuffered edge of over a mile with actively farmed ground in an EFU zone.
- b) amended the boundary of the Grandhaven expansion area adopted in 2003. It previously bordered Baker Creek and the Yamhill River. The amended boundary creates an unbuffered edge of approximately 1 mile with actively farmed ground in an EFU zone.
- c) amended the boundary of the Norton Lane expansion area adopted in 2003. It previously bordered the Yamhill River. The amended boundary creates an unbuffered edge of approximately 1 mile with actively farmed ground in an EFU zone.
- d) amended the boundary of the Southwest expansion area adopted in 2003. It now directly abuts actively farmed ground in an EFU zone for approximately 1600 feet.

The department rejected our objections, concluding that the city's 2003 finding quoted above was adequate. This response misconstrues Goal 14, Factor 7. The city needs to



consider what the compatibility of the various proposed new urban uses with agricultural activities that are adjacent or near the actual boundaries of the new urban areas.

Other issues specific to Three Mile Lane area and the Southwest area are addressed below:

### Three Mile Lane

Of all the resource areas included within the UGB, the Three Mile Lane area is the most objectionable. This area is located south of Three Mile Lane, a 5-lane limited access state highway varying in width from approximately 600' in the vicinity of the interchange to approximately 250'.<sup>72</sup> It creates a physical barrier that isolates that area from the rest of the city, discouraging non-vehicular ingress and egress. The area is comprised of primarily Class I and II soils.<sup>73</sup> The city proposes extensive new residential and commercial development south of the highway in this area of prime farmland. Currently the hospital, the airport, and offices related to the airport and hospital are the primary urban uses south of the highway.

The city has not satisfied the legal criteria necessary to justify inclusion of this area in the UGB.

*a. Goal 14 requires the city to consider the compatibility of urban development within the expansion area with nearby agricultural activity.*

As explained above, the department's rejection of this objection misconstrues the requirements of Goal 14 and OAR 660, Division 4.

### *b. Weapons Training Facility*

When considering higher-priority land of poorer soils, the city found the nearby weapons training facility to be incompatible with urban residential development.<sup>74</sup>

The city reached a similar finding in exceptions filed with DLCD:

"In summary, the City finds it entirely inappropriate to locate residential or commercial land uses... in close proximity to an area used for day and night time training of SWAT and police personnel from the region. The City assumed that this type of incompatibility would be readily recognized and that no further analysis would be necessary."<sup>75</sup>

<sup>72</sup> MGMUP, p. C-163 and testimony in local record

<sup>73</sup> MGMUP, p. C-167

<sup>74</sup> Findings, p. 52

<sup>75</sup> Exception to DLCD report on McMinnville's Task 1 and UGB Amendment, p. 21, submitted by McMinnville April 9, 2004

In the recent remand hearings the city again put forth the Weapons Training Facility as a reason the higher-priority land could not reasonably accommodate urban development.<sup>76</sup>

The Weapons Training Facility is actually located closer to the area of the Three Mile Lane expansion area proposed for residential use (about  $\frac{3}{4}$  mile) than to the edge of the higher-priority area of Class IV soils east of the airport (over 1 mile).<sup>77</sup> Therefore, much of the Three Mile Lane area, which is predominantly Class II soils and is closer to the weapons training facility is even more inappropriate for residential or commercial land uses.

The department rejected our objection because the city had additional reasons for excluding lands east of the airport. This response misconstrues the city's findings.

The weapons facility is either compatible with urban development or it is not. The city and county found that it is not. In fact, the city "finds it entirely inappropriate to locate residential or commercial land uses... in close proximity to an area used for day and night time training of SWAT and police personnel from the region. The City assumed that this type of incompatibility would be readily recognized and that no further analysis would be necessary."<sup>78</sup>

Goal 2 requires that plans and findings have an adequate factual basis and be internally consistent.

The city's findings do not explain why the weapons facility renders urban development on poorer soils inappropriate, but does not have the same affect on prime soils that are closer to it.

For this reason, the city's submittal violates Goal 2, Goal 14 and ORS 197.298.

*c. The city justifies the inclusion of the Three Mile Lane area in part based on the need for a Neighborhood Activity Center in this vicinity.*<sup>79</sup>

The local record suggests the Norton Lane Area, directly across Highway 18, is a much better location for a Neighborhood Activity Center on the south side McMinnville. This area is in close proximity and has easy pedestrian access to the new Chemekata Community College location, movie theaters, restaurants, medical offices, and government offices including the State Department of Human Services and the new Yamhill County Housing Authority complex. The area is adjacent to existing residential development and its development could incorporate the new college campus and the continued redevelopment of the Tanger outlet mall. It is on the same side of the Highway as the existing urban area, an existing frontage road already provides access to downtown

<sup>76</sup> City of McMinnville staff memorandum, October 14 2005, attached to objections filed February 17, 2006

<sup>77</sup> Attachments to objections filed February 3, 2006

<sup>78</sup> Exception to DLCD report on McMinnville's Task 1 and UGB Amendment, p. 21, submitted by McMinnville April 9, 2004

<sup>79</sup> Findings, p. 22, pp. 46-47, p. 148

and the rest of McMinnville, and access to Joe Dancer Park could be developed.<sup>80</sup>

In contrast, the Three Mile Lane Area south of Highway 18 is not a good location for a Neighborhood Activity Center. The Highway is a 5-lane limited access facility with frontage roads. It creates a physical barrier that isolates that area from the rest of the City, discouraging non-vehicular ingress and egress.

d. As detailed in earlier portions of this objection, there are exception areas and higher-priority resource areas that can reasonably accommodate identified land needs. For this reason, inclusion of the Three Mile Lane area violates Goal 14 and ORS 197.298.

#### Southwest Area

The Southwest area is also particularly objectionable. The area is prime agricultural land.<sup>81</sup> It is actively farmed and is adjacent to other prime agricultural land that is actively farmed.<sup>82</sup> The city's decision calls for medium-density and high-density housing along Hill Road, which forms the western boundary of the area.<sup>83</sup>

The city has not satisfied the legal criteria necessary to justify inclusion of this area in the UGB.

Local testimony from an adjacent farmer and objections filed in 2003 point out that placing residential development directly adjacent to the commercial agricultural operations across Hill Road makes future conflicts nearly inevitable.<sup>84</sup>

The department rejected our objection, concluding that the city does not plan for medium-density and high-density housing along Hill Road. The department has apparently misread the city's plan policies and zoning regulations adopted with this decision:

Plan Policy 188.32 and Section 4.D.d.iii of the Neighborhood Activity Center Ordinance:

"The Activity Center should be located... on the north and/or south side(s) of the intersection of Hill Road and the westerly extension of Mitchell Drive."

Plan Policy 188.37 and Section 4.D.d.vi. of the Neighborhood Activity Center Ordinance:

"The location of multi-family housing should be limited to locations adjacent to the commercial center, parkland and along Hill Road or Mitchell Drive."

<sup>80</sup> See attachment to objections filed February 3, 2006

<sup>81</sup> See attachment to objections filed February 3, 2006 and MGMUP, p. C-173

<sup>82</sup> Findings, pp. 72-73

<sup>83</sup> MGMUP, p. 7-20

<sup>84</sup> See MGUMP, p. C-171, 2003 testimony of Jennifer Noble, 2003 objections of 1000 Friends, p. 19

Plan Policy 188.38 and Section 4.D.d.vii of the Neighborhood Activity Center Ordinance:

"Medium density residential development should be encouraged... adjacent to Hill Road."

Goal 14 requires the city to consider the compatibility of urban development within the expansion area with nearby agricultural activity. Despite the local testimony regarding potential conflicts and despite the previously cited testimony from ODA and 1000 Friends regarding the need to address this criterion, the city has not analyzed the compatibility of proposed uses in the Southwest area with nearby agricultural activities for either the boundary adopted in 2003 or the amended boundary adopted in 2006.

For these reasons, the city's submittal violates Goal 14, Goal 2 and OAR 660, Division 4.

In addition, there are exception areas and higher-priority resource areas that can reasonably accommodate identified land needs. For this reason, inclusion of the Southwest area violates Goal 14 and ORS 197.298.

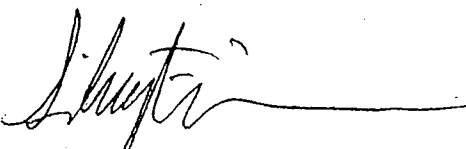
For the reasons outlined in the various portions of Objection 12, McMinnville's proposed UGB amendment does not comply with ORS 197.298, ORS 197.732, Goal 14 and Goal 2.

**Remedy:**

**The Department should remand the *MGMUP* with instructions to conduct a UGB land priority analysis that is coordinated around the entire UGB, comply with Goal 14, Factor 7, and include the exception areas and higher priority resource areas identified in our objections before including prime farmland in the UGB expansion.**

Sincerely,

15/  
Marilyn Reeves  
Friends of Yamhill County

  
Sid Friedman  
1000 Friends of Oregon

15/  
Ilsa Perse

Attachment (Excerpt from local record):

1. Excerpts from city staff memoranda dated October 14 and November 30, 2005

Cc: (without attachments)



**DATE:** October 14, 2005  
**TO:** Mayor and McMinnville City Council  
Yamhill County Board of Commissioners  
McMinnville Urban Area Management Commission  
**CC:** Kent Taylor, City Manager  
**FROM:** McMinnville Planning Department  
**SUBJECT:** PROPOSED AMENDMENTS TO THE McMINNVILLE GROWTH  
MANAGEMENT AND URBANIZATION PLAN AND SUPPORTING  
MATERIALS

#### ☐ Overview

Following the City Council's adoption of the McMinnville Growth Management and Urbanization Plan in October of 2003, the plan was forwarded to the Oregon Department of Land Conservation and Development (DLCD) for their review and approval. Due to the objections filed by 1000 Friends of Oregon, Friends of Yamhill County, and other parties, the DLCD referred this matter to the Land Conservation and Development Commission (LCDC) for decision. As part of that referral, the Commission was provided copies of the MGMUP, written objections, responses to the objections authored by the City, and a staff report from DLCD. This latter report included responses to each of the objections and City responses, as well as DLCD staff recommended actions for their Commission's consideration.

Hearings before the LCDC were held on April 22 and September 10, 2004, for the purpose of reviewing the MGMUP, objections to the plan, and DLCD staff recommendation. Used as an agenda for these hearings was the list of recommended plan amendments that appeared in the DLCD staff report. This list grouped the various objections and recommended actions into three categories: 1) buildable land and land need (i.e., how much land does McMinnville need to meet projected growth needs); 2) alternative lands analysis (where should the boundary be expanded); and, 3) efficiency measures (how to implement the plan). Unfortunately, time permitted the LCDC to consider only the first set of issues; no discussion occurred around the issues of the boundary expansion or efficiency measures. Staff notes, however, that of the issues reviewed by LCDC, the City position was upheld on nearly every account.

Following the September hearing, the LCDC issued a Remand Order to the City on December 3, 2004. Of most relevance, this Order identified specific elements of the MGMUP acknowledged by them, and other issues that would require corrective action. The Order also noted that the LCDC had not reviewed several pieces of the MGMUP that had been questioned

## ABRAMS PROPERTY

### ☐ Background

In the months since adoption of the McMinnville Growth Management and Urbanization Plan (MGMUP), a Measure 37 claim has been filed with Yamhill County by Maralynn Abrams seeking development rights on some 342 acres of land situated adjacent to the urban growth boundary (UGB) in northwest McMinnville (tax lots R4418 1000, R4518 01100, and R4513 00100). This land, in part, was identified as part of the October 2003 McMinnville UGB expansion (Northwest Subarea).

This Measure 37 claim was filed with Yamhill County (Docket M37-01-04) in December 2004 and was subsequently upheld by both the Yamhill County Board of Commissioners in May 2005 (Board Order 05-386), and the Oregon Land Conservation and Development Commission (State Claim Number 118918) in June 2005. As noted previously, this land lies to the northwest of McMinnville and is adjacent to the current McMinnville UGB to the east and south.

As specified in the McMinnville Growth Management and Urbanization Plan (MGMUP), tax lot 1000 is part of the Northwest Neighborhood Activity Center (NAC) and is recommended, generally, for medium and higher-density residential development. The Abrams, however, have publicly made clear their intent to develop the majority of this land with low density, rural residential single-family home sites averaging approximately one-acre in size. In addition, their plans would include some commercial development adjacent to Hill Road. This density of residential development, and vision generally articulated by the Abrams, runs counter to the vision described in the MGMUP for this area. More specifically, rural residential development of this area would, under the Measure 37 ruling and applicable County standards, not require urban street and pedestrian improvements; urban residential density and development patterns (compact, walkable neighborhoods); or, municipal water, sewer, or storm drainage systems. Development of this land to rural standards (use of private septic systems and wells, larger lot sizes, narrower rights-of-way) would make future urbanization of this area extremely difficult and costly.

In subsequent discussions with the Abrams family, Yamhill County Planning Director Mike Brandt, DLCD staff (including Director Lane Shetterly), and City of McMinnville staff, it has been mutually agreed that the MGMUP should be amended to include portions of this land located south of Baker Creek into the McMinnville UGB. In so doing, the Abrams family has agreed to release from their Measure 37 rights the land north of Baker Creek, totaling approximately 179 acres, thereby keeping this portion of their land in agricultural use.

Related to this issue, Maralynn Abrams has made application to Yamhill County seeking approval of a 50-lot tentative residential subdivision plan on approximately 67 acres of this property (located on portions of tax lots 1000 and 1100). The tentative subdivision plan for this development proposes lots that are predominantly one-half acre or more in size. Some six acres of the easternmost portion of the site is identified for future commercial development. The land subject to this application is generally located west of the future elementary school site on Hill Road and north of the future high school property.

☐ **Staff Recommendation:**

As regard the proposed amendments to both the buildable land inventory and McMinnville's projected twenty-year land need, it has become necessary to consider additional acres for inclusion to McMinnville's UGB. In light of this need, and for reasons articulated above, staff recommends the Northwest Subarea be amended to include the Abrams property south of Baker Creek and west of Hill Road. Also, the 20-acre property identified as Tax Lot R4418 - 1001 should be included, due to the fact that it is "captured" within the boundaries of the Abram's property. This will reduce McMinnville's buildable land deficit to 212.95 acres; resolution of this deficit is addressed elsewhere.

In support of this recommendation, staff offers the following findings as a supplement to those that already exist in the "Findings" document. These findings address the criteria and standards required for justification of a boundary amendment, as provided in the April 28, 2004 amended Goal 14 (Urbanization). This Goal requires the evaluation of alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

1. Efficient accommodation of identified land needs;
2. Orderly and economic provision of public facilities and services;
3. Comparative environmental, energy, economic and social consequences, and
4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

The following is the City's response to these requirements.

**ORS 197.298 Priority of land to be included within urban growth boundary.**

This statute requires that land may not be included within an urban growth boundary except under the following priorities:

- (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.*

**Finding:** McMinnville has no lands designated "urban reserve;" therefore this criterion does not apply.

- (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.*

**Finding:** As part of the MGMUP, the City identified nine separate non-resource subareas adjacent to the existing UGB. Each subarea was evaluated as to their ability to accommodate future growth and identified land needs. The results of that analysis are contained with Appendix C of the MGMUP. Based upon this analysis, the City concluded that certain of these subareas be included in the proposed UGB expansion (see Findings, pp. 25 - 49). This analysis further concluded that McMinnville could not accommodate all of its identified land need within non-resource lands. As such, lower priority lands would need to be considered. The City, in this analysis, reaffirms its prior findings and conclusions

